ILE COPY

Office-Supreme Court, U.S.
FILED
SEP 17 1959
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORF and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

Petitioners' Reply Brief

On Petition for Writs of Certiorari to the Supreme Court of the State of California, to the District Court of Appeal, First Appellate District, to the Superior Court in and for the City and County of San Francisco.

AARON M. SARGENT
1115 Hobart Building
San Francisco 4, California
Attorney for Petitioners

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO 5

SUBJECT INDEX

	Page
Summary of Argument	2
Argument	5
Statement of the Issues	5
Federal Questions Presented	9
Falsehoods of Major Importance	10
The True Situation	12
Refusal to Enforce Statutes Controlling Interpretation	13
Entry of a Judgment Based on Illegal Evidence	15
Arbitrary Presumption in Favor of Respondent	16
Refusal to Enforce Laws of Inheritance	17
Exercise of Legislative Power by Judiciary	17
Constitutional Protection for Property Rights	20
Certiorari to Enforce Constitutional Rights	22
Summary Relief on Certiorari	24
Denial of Due Process on Appeal	25
The Motion for Disqualification	26
Equal Protection on Certiorari	28
Additional Questions Presented for Review	29
Additional Reasons for Issuing the Writs	30
Status of Petitioners	31
Conclusion	32
Appendix	

TABLE OF AUTHORITIES CITED

Cases	Pages
Adamson v. California, 332 U.S. 46	5
Ashdown v. Utah, 357 U.S. 426	24
Barsky v. Board of Regents, 347 U.S. 442	21
Beilan v. Board of Education, 357 U.S. 399	22
Benanti v. United States, 355 U.S. 96	7, 16
Blackburn v. Alabama, 354 U.S. 393	23, 25
Bolling v. Sharpe, 347 U.S. 497	21, 29
Bourn, Estate of, 25 Cal. App. 2d 590, 73 P.2d 493	14
Brown v. Board of Education, 347 U.S. 483	21
Carson v. Warlick, 238 F.2d 724	6, 7
Chessman v. Teets, 354 U.S. 156	7, 25
Cicenia v. Lagay, 357 U.S. 504	24
Cole v. Young, 351 U.S. 536	21
County of Alleghény v. Frank Mashuda Co., No. 347, Oct. Term 1958	24
Crooker v. California, 357 U.S. 433	24
Dayton v. Dulles, 357 U.S. 144	19
DeCirgaran, Estate of, 150 Cal. 682; 89 P. 833	18
Delli Paoli v. United States, 362 U.S. 232	28
DeVries v. Baumgartner's Electric Construction Co., No. 551, Oct. Term 1958	25
Dickinson v. United States, 346 U.S. 389	22
Duncan v. Kahanamoku, 327 U.S. 304	19
Dyer v. SEC, No. 67, Oct. Term 1958	25
Eubanks v. Louisiana, 356 U.S. 584	9
Evans v. Superior Court, 107 Cal. App. 372	28
Fikes v. Alabama, 352 U.S. 191	23
First Unitarian Church v. Los Angeles, 357 U.S. 545	21
Giometti v. Etienne, 219 Cal. 687, 28 P.2d 913	28
Giordenello v. United States, 357 U.S. 480	8, 16
Granville-Smith v. Granville-Smith, 349 U.S. 1	19
Greene v. McElroy, No. 180 Oct. Term 1958, June 29, 1959 (CCH p. 1985)	18, 21, 30
Griffin v. Illinois, 351 U.S. 12	25
Grocery Drivers Union Local No. 848 v. Seven-Up Bottling Company of Los Angeles, No. 169, Oct. Term 1958	25

	Pages
Handford v. United States, No. 578, Oct. Term 1958	25
Harmon *v.* Brucker, 355 U.S. 579	19
Hawkins v. United States, No. 20 Oct. Term 1958, CCH p. 113	7, 16
Herman v. Claudy, 350 U.S. 116	23
Hernandez v. Texas, 347 U.S. 475	9
Huebner, Estate of, 127 Cal. App. 244, 15 P.2d 758	17
Ingram, Estate of, 78 Cal. 586; 21 P. 435	18
Irwin v. Dowd, No. 63, Oct. Term 1958, May 4, 1959 (CCH p. 1125)	24
Kent v. Dulles, 357 U.S. 116	19
Kirby, Estate of, 162 Cal. 91; 121 P. 370	18
Kitchens v. United States, Misc. No. 31, Oct. Term 1958	24
Kline, Estate of, 138 Cal. App. 514, 32 P.2d 677	16, 17
Konigsberg v. State Bar, 353 U.S. 252	21, 28
Lassiter v. Northampton County Board of Elections, No. 584 Oct. Term 1958 (CCH p. 1523)	6
Lerner v. Casey, 357 U.S. 468	22
Leyra v. Denno, 347 U.S. 556	22
Lyons, Estate of, 36 Cal. App. 2d 92; 96 P.2d 1018	14
Mallory v. United States, 354 U.S. 449	23
Masciale v. United States, 356 U.S. 386	23
Maud v. Catherwood, 67 Cal. App. 2d 636; 155 P. 111, 114	18
Miller v. United States, 357 U.S. 301	8, 16, 24
Mitchel v. Louisiana, 350 U.S. 91, 104	9
Napue v. Illinois, No. 583 Oct. Term 1958; CCH p. 1657	7
New Orleans City Park Improvement Assn. v. Detiege, No. 295, Oct. Term 1958	24
Northcutt, Estate of, 16 Cal. 2d 683, 107 P.2d 607	14
Nowak v. United States, 356 U.S. 660	23
Offutt v. United States, 348 U.S. 11	28
Ohio, ex rel. Klapps v. Dayton Power & Light Co., No. 851, Oct. Term 1958	25

	Pages
Payne v. Arkansas, 356 U.S. 560	23
Peabody, Estate of, 21 Cal. App. 2d 690, 70 P.2d 249	17
Pearson v. Hanson, 96 Cal. App. 2d 394; 215 P.2d 529	14
Pennsylvania v. Nelson, 350 U.S. 497	19
Peters v. Hobby, 349 U.S. 331	19, 21
Rea v. United States, 350 U.S. 214	9
Reece v. Georgia, 350 U.S. 85	9
Reid v. Covert, 354 U.S. 1	19
Rowoldt v. Perfetto, 355 U.S. 115	23
Saganon Valley Television Corp. v. United States, No. 235, Oct. Term 1958	24
Schware v. Board of Bar Examiners, 353 U.S. 232	21, 28
Shelley v. Kraemer, 334 U.S. 1, 21	4, 9, 16, 21, 25, 29, 31
Shenfan v. United States, 356 U.S. 369	23
Shuttlesworth v. Birmingham Board of Education, No. 341 Oct. Term 1958, CCH p. 92	5
Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 384	6
Sfochower v. Board of Education, 350 U.S. 551	22
Smith v. United States, Misc. No. 192, Oct. Term 1958	25
Speiser v. Randall, 357 U.S. 513	21
Sutro, Estate of, 155 Cal. 727, 102 P. 920	17
Sweezy v. New Hampshire, 354 U.S. 234	20
Taylor v. McElroy, No. 504, Oct. Term 1958, CCH p. 2089	19, 20
Thomson v. Butler, 136 F.2d 644	8, 30
Townsend v. Sain, Misc. No. 552, Oct. Term 1958	25
Ullmann v. United States, 350 U.S. 422	20
United States, ex rel. Farnsworth v. Murphy, No. 82, Oct. Term 1958	24
United States v. Hulley, No. 300, Oct. Term 1958	25
United States v. Sacher, et al., 182 F.2d 416	28
Vance, Estate of, 148 Cal. App. 163, 4 P.2d 977	17
Vitarelli v. Seaton, No. 101, Oct. Term, 1958, CCH p. 1330	19, 22

	Pages
Walkerly, Estate of, 108 Cal. 627, 41 P. 772	14
Williams v. Georgia, 349 U.S. 375	9, 22
WIRL Television Corp. v. United States, No. 242, Oct. Term 1958	24
WORZ, Inc. v. Federal Communications Comm., No. 349, Oct. Term 1958	24
Young, Estate of, 123 Cal. 337; 55 P. 1011	14
Youngstown Sheet & Tube Co., et al. v. Sawyer, 343 U.S. 579	20, 30

CONSTITUTIONS

Constitution of California:	
Art. III, Section 1	18
Art. VI, Section 4a	26
Constitution of the United States:	
Amendment V	3, 16
Amendment XIV	4 et seq.

STATUTES AND RULES

Code of Civil Procedure:	
Section 170	28
Secs. 1959, 1961, 1962, 1963	15
Education Code, Secs. 21301-21303	12
Probate Code:	
Section 50	13
Section 100	13
Section 102	14, 15
Section 105	13, 14
Section 106	14
Rules of the U. S. Supreme Court:	
Rule 19	3, 22
Rule 24(4)	4
Rule 40(d)	1
28 U.S.C.A., Sections 1254, 1257	22, 32

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of
JANET M. PECK,
Deceased.

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

Petitioners' Reply Brief

On Petition for Writs of Certiorari to the Supreme Court of the State of California, to the District Court of Appeal, First Appellate District, to the Superior Court in and for the City and County of San Francisco.

SUMMARY OF ARGUMENT

In compliance with Rule 40(f), Petitioners submit the following outline:

The Issues. Questions other than the interpretation of a will or validity of a trust are involved. The Federal questions arise from unconstitutional administration of State laws, discrimination in their application, and an unwarranted exercise of legislative power by the State judiciary.

Federal Questions.

(1) False interpretation of a will;
(2) Misrepresentation of other facts of record;
(3) Refusal to enforce statutes of interpretation;
(4) Refusal to enforce laws invalidating a trust;
(5) Unconstitutional administration of such laws;
(6) Resort to a presumption prohibited by law and the will;
(7) Arbitrary discrimination without a factual basis;
(8) Denial of procedural due process on appeal;
(9) Exercise of legislative power beyond authority of State judiciary.

Misrepresentations. In six instances of major importance, the contents of the will and of the record are misrepresented and falsely stated. A true interpretation of the will discloses authority to engage in discretionary non-charitable activities—a situation invalidating the trust.

Non-enforcement of Statutes. Decisions in other cases reveal that the statutes controlling interpretation were strictly enforced there, and not here. The same situation exists as to the laws invalidating the trust.

Illegal Presumption. The Judgment is actually based on a presumption prohibited by the statutes and is therefore the result of an unlawful act, equivalent to the receipt of

illegal evidence. It is also the product of an arbitrary presumption in favor of one party and against others.

Exercise of Legislative Power. The State Constitution provides for a separation of powers, and the judiciary is without authority to change laws of inheritance. The judgment here is therefore invalid to the same extent as in cases where Departments of the Federal Government have been held without authority to make laws or otherwise act outside their jurisdiction.

Defense of Property Rights. Under the Constitution, property rights of all kinds are entitled to equal protection and enforcement. There is presently a need for a decision of this Court defining constitutional rights in reference to civil actions.

Enforcement Procedures. Rule 19 was not intended to cover all types of cases. There is certiorari jurisdiction to enforce compliance with the Constitution, regardless of the presence or absence of unusual, important, or unsettled questions of law. That power has been exercised in many cases.

Summary Relief. There is also power to issue a writ and grant summary relief, as has been done in other matters.

Due Process on Appeal. The due process clause applies to the proceedings of the appellate courts of a state, as well as to the trial courts.

Motion for Disqualification. Petitioners were justified in seeking disqualification of one of the Associate Justices of the District Court of Appeal, and his failure to participate herein and take an active part in the proceedings, after denial of the motion, amounted to a denial of due process.

Equal Protection on Certiorari. The due process clause of the Fifth Amendment includes equal protection, and it applies to the Federal judiciary. The exercise of certiorari jurisdiction is subject to this requirement.

Additional Questions Involved. The distinction, if any, between criminal and civil cases, in respect to due process and equal protection; Refusal to enforce laws as a denial of constitutional rights; State exercise of judicial power as an unconstitutional act.

Additional Reasons for Writs. Effect of the judgment here on Federal Revenue Laws, particularly the Federal estate tax; Correction of the error in the dictum in *Shelley v. Kraemer*, 334 U.S. 1, 21, in respect to possible limitation on scope of the Fourteenth Amendment.

ARGUMENT

This brief is filed pursuant to Rule 24(4) as a jurisdictional statement and in reply to the objections raised by Respondent on that limited ground. The merits will be discussed to the extent required to show that the questions presented are Federal and substantial. Unless otherwise stated, all italics and other emphasis used herein is ours.

STATEMENT OF THE ISSUES

Respondent questions the jurisdiction, asserting (1) that the judgment is based on the interpretation of a will; and (2) that the validity of the trust depends on State or "local" law. This is a clever, but evasive, analysis. A great deal more is involved.

There was no "*interpretation*" of the will in the legal sense. False statements and half truths were substituted for legal analysis. This conduct was deliberate. There was misrepresentation as to the content of the record; refusal to enforce the statutes controlling interpretation; an unconstitutional administration of those laws; resort to inadmissible evidence in determining the intent of decedent; unequal enforcement of the laws governing rights of inheritance; an arbitrary discrimination in favor of Respondent; denial of due process on appeal; and an exercise of legislative power beyond the authority of the judiciary — an act equivalent to usurpation.

The Fourteenth Amendment was adopted to put an end to just such practices as these.[1] That was the basis of this Court's order in *Shuttlesworth v. Birmingham Board of Education*, No. 344, Oct. Term, 1958, CCH p. 92[2] upholding

1. See Appendix to Opinion of Justice Black in *Adamson v. California*, 332 U.S. 46 at 92 et seq.

2. Commerce Clearing House Inc. United States Supreme Court Bulletin, Nov. 24 1958 page 92. *Note*: This publication will be here

the *Alabama Pupil Placement Law* pending an exercise of *further jurisdiction*, viz:

> "*Per Curiam:* The motion to affirm is granted and the judgment is affirmed upon the limited grounds on which the District Court rested its decision. 162 F. Supp. 372, 384."

The District Court opinion so approved had the following proviso:

> "All that has been said in this present opinion must be limited to the constitutionality of the law *upon its face*. The School Placement Law furnishes the legal machinery for an orderly administration of the public schools in a constitutional manner * * *. We *presume that it will be so administered*. If not, in some future proceeding it is possible that it may be declared *unconstitutional in its application*." (*Shuttlesworth v. Birmingham Board of Education*; 162 F. Supp. 384)

See opinion of Chief Judge Parker in *Carson v. Warlick*, 238 F.2d 724, sustaining the North Carolina Pupil Enrollment Act on the same ground.

In *Lassiter v. Northampton County Board of Elections*, No. 584 Oct. Term 1958 (CCH p. 1523), this Court upheld a voters' literacy test as valid on its face. Jurisdiction was again reserved to determine whether inequality in fact might result from its administration. The following comment appears therein:

> "If they (whites) were allowed to vote without taking a literacy test and if appellant (a Negro) were denied the right to vote unless she passed it, members of the white race would receive preferential privileges on the ballot contrary to the command of the Fifteenth Amendment. That would be analagous to the problem posed in the classic case of *Yick Wo v. Hopkins*, 118 US 356, where an ordinance unimpeachable on its face was applied in such a way as to violate the guarantee of equal protection contained in the Fourteenth Amend-

ment. But this issue of discrimination in the actual operation of the ballot laws * * * has not been framed * * *. So we do not reach it. But we mention it in passing so that it may be clear that nothing we say or do here will prejudice appellant in tendering that issue in the federal proceedings which await the termination of this state court litigation * * *.

"Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. No such influence is charged here."

It is clear from these cases that the unequal administration of a valid law is a denial of due process. The test in all these situations is the *result*; not the means by which it is accomplished. In the Pupil Placement cases the rights asserted are as *individuals*—not as members of a particular class or group (*Carson v. Warlick*, 238 F.2d 729).[3] It follows that these opinions are also valid authority in situations where the persons involved have no such group affiliation.

It is a denial of due process for a District Attorney to use perjured evidence with knowledge of its falsity (*Napue v. Illinois*, No. 583 Oct. Term 1958; CCH p. 1657). The same rule must apply where the State acts through a *Court* instead of a prosecutor.

Falsification of an appeal record is a denial of due process (*Chessman v. Teets*, 354 U.S. 156). Judgments have been reversed on constitutional grounds where based on wire-tapping (*Benanti v. United States*, 355 U.S. 96); testimony given by a wife over the objection of defendant, her husband (*Hawkins v. United States*, No. 20 Oct. Term 1958,

3. "There is no question as to the right of these school children to be admitted to the schools of North Carolina without discrimination on the ground of race. They are admitted, however, as *individuals*, not as a class or group; and it is as *individuals* that their rights under the Constitution are asserted."

CCH p. 113); evidence obtained with a search warrant based on hearsay (*Giordenello v. United States*, 357 U.S. 480); and proof secured by illegal entry and arrest without a warrant (*Miller v. United States*, 357 U.S. 301). Federal officers have been enjoined from turning over to state authorities evidence obtained on an illegal federal search and seizure, and restrained from testifying in a state court in reference thereto (*Rea v. United States*, 350 U.S. 214).

These are criminal cases. However, the Fourteenth Amendment surrounds *property rights* with the same protection given to "*life*" and "*liberty*"—rights which normally are the subject of criminal proceedings. There is no valid basis for distinction between criminal and civil actions, or as between enforcement of rights in property and rights of the person. All rights of all persons are constitutionally secured.

The only difference between criminal and civil proceedings lies in the fact that in some cases the conduct complained of does not constitute the "*act* of the State." For example, it was held in *Thomson v. Butler*, 136 F.2d 644, at 647-648, that:

> "The due process clause of the Fourteenth Amendment is not a guarantee against the use or results of perjury or fraud by *parties to private litigation* in state courts, uncountenanced by the general standards and processes of the state court system. * * * The rule recognized in *Pyle v. State of Kansas*, 317 U.S. 213 * * * and other cases * * * has application only to public litigation in which authorities of the State, with responsibility for the litigation, have committed or countenanced a fraud or fundamental unfairness * * * which has entered into a deprivation of life, liberty or property by the State."

It seems clear that no such rule can apply in a civil action where the State acts through its judiciary in imposing such

consequences on one of the litigants. This constitutes "State action" within the meaning of the Fourteenth Amendment. It was so held in *Shelley v. Kraemer*, 334 U.S. 1.[4] The jury selection cases also rest on the proposition that State judicial action is the cause of the prohibited result.[5]

FEDERAL QUESTIONS PRESENTED

Due process and the equal protection of the laws have been here denied, by judicial action, in each of the following respects:

First: By a deliberately false and untruthful "interpretation" of decedent's will;

Second: By an untruthful opinion misrepresenting other essential facts, of record;

Third: By a refusal to enforce, and give full legal effect to, the statutes controlling the interpretation of this will;

Fourth: By a refusal to enforce, and give full legal effect to, the constitutional provision and statute under which decedent's trust is invalid;

Fifth: By an unconstitutional administration of these laws, contrary to the force and effect given thereto in other cases;

Sixth: By entry of a judgment based on inadmissible evidence in the form of a "presumption" contrary to the terms of the will;

4. "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the Fourteenth Amendment." Opinion of Chief Justice Vinson, 334 U.S. 14.

5. *Hernandez v. Texas*, 347 U.S. 475; *Williams v. Georgia*, 349 U.S. 375; *Reece v. Georgia*, 350 U.S. 85; *Hoyt v. Louisiana*, 350 U.S. 91, 104; and *Eubanks v. Louisiana*, 356 U.S. 584.

Seventh: By exercise of an arbitrary and discriminatory presumption in favor of Respondent;

Eighth: By conduct amounting to a denial of due process and equal protection on appeal;

Ninth: By an attempt to exercise legislative power beyond the authority of the State Judiciary.

Falsehoods of Major Importance.

There are six false representations bearing directly on the validity of the judgment—a fact that is clear from the following analysis:

THE OPINION	THE TRUTH
1. Prohibition. "In the instant case, the will restricts the use of trust property solely to charitable purposes." (Op. vi: 4-5.)	**No prohibition.** There is no clause or term imposing any such restriction.
2. Single purpose. It is represented that the trust has only **one** purpose—"to contribute toward world peace by providing education for newspapermen." (Op. iv: 17-20.)	**Multiple purposes.** The plural form in the words "conditions" and "purposes" requires the interpretation that there are **several** purposes and more than one condition to be remedied.[6]
3. Educational purpose. "Such a purpose is fundamentally educational. It has long been the law in this state, that a trust for educational purposes is a trust for charitable purposes." (Op. iv: 19-22.)	**Not specified.** There is no clause requiring that **educational** means be used either in whole or in part. Non-educational activity is permitted.

[6]. The implementing clause of the will at 4-19-26 reads as follows: "I have therefore long cherished the hope that I might be able to *do something* to help toward the correction of *these conditions*, and to that end I hereby give and bequeath * * * all of my estate and property * * * *in trust* for the *foregoing purposes* * * *."

4. For a professorship.

"If the trust income is insufficient, the trustees **are to establish** a professorship." (Op. vi: 11-15.)

Not required.

Precatory words used in this clause disclose an intent to impose no legally binding obligation.[7]

5. Bequest to Stanford.

"The testatrix intended to make a bequest to the governing body of Stanford University." (Op. vii: 18-20.)

Not for the University.

The will contains no clause requiring the trust to be administered for benefit of the University or any department thereof. The Foundation **may** be set up in another State or place; operated **independently** of the University.[8]

7. See Will 6:26-7:5. "In the administration of said Foundation if the net income derived from said trust property and available for the aforesaid purposes, is ever sufficient to make such course possible, it is my *hope* and *expectation* that my said Trustees *will establish* a full-time *professorship* hereunder."

8. Throughout the will decedent refers to the trustees as "*my* said Trustees". There are twelve such references indicating that the persons acting shall be trustees for her benefit and *not for the use or benefit of Stanford*. The express purpose of the trust is to *establish* a Foundation and *maintain* it with income from residue of the estate (Will: 5:2-5). The Foundation may be established at any place or places. It is not legally necessary that the university be in any way connected with it. The will shows that decedent had in mind the possibility that successor trustees might be appointed to carry it out. See Will: 8:10-17:

> "It must be understood that the above respective incomes to the respective individuals herein named, are to be paid in full and without fail, and *if* my said Trustees *and/or* said The Leland Stanford Junior University accept the gift for said Foundation of World Relations, hereinabove provided for, *they* must do so subject to such charge on both the corpus of said trust estate and all income derived therefrom."

6. Charitable status.

"* * * under the terms of the founding grant, which is made applicable to all bequests to the Stanford Trustees by section 10 of article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes." (Op. vi: 14-19.)

Non-charitable powers.

The Stanford Board is a corporate body with both charitable and non-charitable powers. It has acted in both capacities at various times. It has power to function on a non-charitable basis in reference to this trust.[9]

The True Situation.

1. By a failure to prohibit non-charitable activity, the testatrix authorized her Trustees to enter this field.

2. By a failure to instruct or require them to employ *educational means*, she authorized activities both educational and non-educational, thus conferring a discretionary power of selection.

3. It appears on the face of the will that *express* powers were relied on in respect to administration of the corpus of the trust fund set aside for maintenance, and that *implied* powers were to be used by the Foundation in the execution of the trust purposes.[10]

9. Corporate powers are conferred by Education Code Secs. 21301-21303. On October 17, 1946, Respondent incorporated an affiliate, "Stanford Research Institute", to conduct industrial research on a fee contract basis, and it has engaged in this non-charitable business ever since. See Footnotes 8-10, at page 16 of the Petition for other data regarding non-charitable powers and activities of the Stanford Board. There is power to incorporate and operate decedent's Foundation on the same basis.

10. The express powers conferred in respect to administration of trust funds include: Right to postpone expenditures; to invest in securities, land, real estate mortgages; power to sell, assign and convey; authority to retain a specific block of stock for an indefinite term. See Will 5:6-6:17. There is no provision indicating the means to be used in carrying out the trust purposes. Unless there is broad implied power—there is *no* power, in which case the trust would fail for uncertainty.

4. In addition, there is a broad grant of general power to do *anything* likely to correct *any* of the conditions mentioned in the preamble.[11]

The Foundation to be perpetually maintained with estate income will have charter purposes capable of being carried out by either educational or non-educational, charitable or non-charitable, means. The molding of public opinion may be attempted by entering the television and radio broadcasting field, with commercial sponsorship. The knowledge of our citizens in regard to foreign affairs may be increased by publishing a magazine, newspaper, or information bulletin to a list of paid subscribers. Research may be conducted on a fee contract basis for the benefit of publishers of educational materials by an arrangement similar to that now used by Respondent in the case of Stanford Research Institute. These are only a few of the possibilities. The Foundation will have discretionary power to engage in any of them.

An outline of the true legal interpretation of this will is set forth in the appendix.

Refusal to Enforce Statutes Controlling Interpretation.

The statutes which control here are the Probate Code Sections cited at page 9 of the Petition.

Section 50 requires all wills to be in writing.

Under Section 100, the Code applies to all wills affecting property within the State.

Section 105 restricts the determination of intent to the

11. Will 4:19-22 "I have therefore long cherished the hope that I might be able *to do something* to help toward the correction of these conditions, and to that end I hereby give * * *"

words of a will. It prohibits resort to extrinsic evidence except where the words used are ambiguous or uncertain as to meaning.[12]

Under Section 102, meaning and some effect must be given to all of the words in the will.

Section 106 requires that the words be taken in their ordinary and grammatical sense; that technical words be given technical meaning.

These rules have been strictly enforced in other cases. We cite the following as examples:

Estate of Young, 123 Cal. 337, 344; 55 P. 1011; intention to be sought for is not what existed in the mind of testator "but that which is expressed in the language of the will."

Estate of Lyons, 36 Cal. App. 2d 92; 96 P.2d 1018; there can be no reformation of a will on the ground of accident or mistake.

Pearson v. Hansen, 96 Cal. App. 2d 394; 215 P.2d 529; if the language of a will is clear, the intent as shown by such language must be carried out, regardless of how unusual or unreasonable the result may appear to be.

See also cases cited in the footnote.[13]

---

12. Sec. 105: "* * * when an uncertainty arises *upon the face of a will*, as to the application of any of its provisions, the testator's intention is to be ascertained *from the words of the will*, taking into view the circumstances under which it was made, * * *."

13. *Estate of Northcutt*, 16 Cal. 2d 683, 688, 107 P.2d 607, 610; words of a will are to receive an interpretation which will give some effect to every expression rather than render certain parts inoperative; technical words are to be taken in a technical sense where the will was the work of a legal draftsman. *Estate of Bonra*, 25 Cal. App. 2d 590, 595, 73 P.2d 193, 196; words must be taken in their grammatical sense, and technical terms in their technical meaning where the draftsman was an attorney. *Estate of Walkerly*, 108 Cal.

The failure to enforce these statutory rules in like manner in the case at bar has deprived Petitioners of their property without due process, and denied them the equal protection of the laws.

Entry of a Judgment Based on Illegal Evidence.

A presumption, lawfully applied, is evidence to the same extent as any other form of proof.[14] The State court sought here to apply a presumption in Respondent's favor in disregard of the meaning of the words in the will and in violation of Probate Code Section 102:

> "The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of *two modes of interpreting* a will, that is to be preferred which will prevent a total intestacy."

There is no right to apply such presumption except where the words have *two* or more possible interpretations—one of which *may* result in an intestacy.

There is no provision authorizing a presumption in favor of "charity" as such. The only basis for "presuming" in its favor is that provided in Section 102. The words in the will must have at least two possible interpretations to justify resort to any presumption of any kind.

Here, the words are both clear and certain. Taken in their ordinary and grammatical sense, they disclose a trust for a mixture of charitable and non-charitable objects. Dis-

627, 41 P. 772; while it may be said of all wills that the testator's intent is to make a valid disposition, a court is not authorized on that ground to modify or vary the plain language, thus creating a new and valid will even though it might be certain that the testator would have adopted such interpretation had he known that his own attempt was invalid.

14. Code Civ. Proc. Secs. 1959, 1961, 1962, 1963.

regarding this factual situation, the Court resorted to a "presumption" on *general principles*.[15] Its conduct was unauthorized, and a violation of State law. The judgment is based on this kind of illegal evidence. A denial of due process and equal protection was the result.

In criminal cases it is settled that due process is denied by the receipt of illegal evidence.[16] The due process clause has the same meaning in the Fifth and Fourteenth Amendments. From the due process standpoint, there can be no difference between criminal and civil proceedings. It follows that the Court, in relying on illegal evidence in the form of an unauthorized "presumption", was party to a violation of constitutional rights.

Arbitrary Presumption in Favor of Respondent.

No State has power to establish or enforce a rule whereby one party to a civil action will be favored or preferred to the detriment of another. In such case, due process and equal protection are denied, regardless of whether the "rule" is one based on statute or a judicial interpretation of the "common law" (*Shelley v. Kraemer*, 334 U.S. 1, 17). The constitutional standards required in such a case are those enunciated in *Estate of Kline*, 138 Cal. App. 514, 519-520, 32 P.2d 677, cited at page 5 of the Petition. The

15. The opinion states that "* * * courts look with favor upon *all attempted charitable bequests* and there is no authority to construe a charitable bequest as legally void *if it can possibly be made good*. It is the policy of the law to favor gifts for charitable purposes and a will providing such gifts will be liberally construed to accomplish the intent of the donor." (Op. iv; 4-10.)

16. *Benanti v. United States*, 355 U.S. 96; *Hawkins v. United States*, No. 20, Oct. Term 1958, CCH p. 113; *Giordenello v. United States*, 357 U.S. 480; *Miller v. United States*, 357 U.S. 301. The use of prohibited evidence to deprive Petitioners of their property rights in a State court is similarly a violation of the Fourteenth Amendment.

failure to apply the minimum constitutional standards set forth in this opinion was a violation of the Fourteenth Amendment. Respondent is not above the law. It is subject to the same rules as other litigants. Its presence in this case confers no greater power on a court than the appearance of an individual having no power or influence. Under the Constitution, *all persons* are guaranteed due process and equal protection.

Refusal to Enforce Laws of Inheritance.

The constitutional and statutory rule against discretionary non-charitable powers is part of the laws of inheritance of the State of California. There is no right to inherit under a perpetual trust containing such a provision. It was the duty of the Court to enforce this law as in effect at date of death. It has been strictly and uniformly enforced in other cases.

See:

Estate of Sutro, 155 Cal. 727, 102 P. 920;
Estate of Vance, 118 Cal. App. 163, 4 P.2d 977;
Estate of Huebner, 127 Cal. App. 244, 15 P.2d 758;
Estate of Kline, 138 Cal. App. 514, 32 P.2d 677;
Estate of Peabody, 21 Cal. App. 2d 690, 70 P.2d 249.

Due process and equal protection were denied by a judicial failure to provide the same kind of enforcement in the case at bar.

Exercise of Legislative Power by Judiciary.

The Court sought to change the State law of inheritance invalidating these trusts by an attempt to exercise legislative power retroactively. The State judiciary has no such jurisdiction or authority. The modification, amendment or

repeal, of these laws is the sole prerogative of the Legislature.

See:

Estate of Ingram, 78 Cal. 586, 588; 21 P. 435;[17]

Estate of DeCigaran, 150 Cal. 682, 688; 89 P. 833, 836;

Estate of Kirby, 162 Cal. 91, 93-94; 121 P. 370;[18]

Maud v. Catheywood, 67 Cal. App. 2d 636, 643; 155 P. 111, 114.[19]

Article III, Sec. 1, of the State Constitution, provides for a complete separation of powers.[20] The unauthorized act of any department of government is unlawful and therefore a denial of due process. This Court has so ruled in many cases involving power and jurisdiction at the Federal level.

See:

Gigeou v. McElroy, No. 180, Oct. Term, 1958, CCH p. 1985; lack of authority by Executive Order or Act of Congress to sustain exercise of jurisdiction

17. It is vain to argue against the injustice of the rule, or to contend that in a case like the one at bar the children of a deceased sister ought to have a share in the estate * * *. Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts." (78 Cal. 588.)

18. Involves the question whether a person not convicted of murder of the decedent but held guilty of manslaughter could inherit. See 162 Cal. 94: "The right of inheritance in this state does not depend upon the ideas of court or counsel as to justice and natural right. The entire matter is in the control of the legislature and depends wholly upon the provisions of the statute, regardless of our notions of natural right and justice."

19. "* * * We must bow to legislative direction when we are told that if the descendants are not of equal degree of kindred 'they take by right of representation' * * *. 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by courts.'"

20. "The powers of the government of the state of California shall be divided into *three separate departments*—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others * * *."

by the Office of Industrial Personnel Security Review and other agencies?

Taylor v. McElroy, No. 504, Oct. Term, 1958, CCH p. 2089; concerning same issue;

Duncan v. Kahanamoku, 327 U.S. 304; validity of martial law in Territory of Hawaii;

Granville-Smith v. Granville-Smith, 349 U.S. 1; want of jurisdiction in District Court of the Virgin Islands to grant a divorce under certain conditions.

Peters v. Hobby, 349 U.S. 331; action by Loyalty Review Board in excess of jurisdiction under Executive Order and held to be "an unwarranted assumption of power";

Reid v. Covert, 354 U.S. 1; want of authority to support court martial trial of civilian dependents accompanying members of the armed forces overseas in time of peace;

Harmon v. Brucker, 355 U.S. 579; want of authority in Secretary of the Army to issue "less than honorable" discharge based on conduct prior to induction in the armed forces;

Kent v. Dulles, 357 U.S. 116; unauthorized action of Secretary of State in denying passport because of alleged communist affiliation and past membership in Communist Party;

Dayton v. Dulles, 357 U.S. 144; same issue involving person having alleged association with members of the Rosenberg espionage ring;

Vitarelli v. Seaton, No. 101, Oct. Term, 1958, CCH p. 1330; reversing order of discharge of Interior Department employee.

In *Pennsylvania v. Nelson*, 350 U.S. 497, State action was set aside on jurisdictional grounds, it being held that Congress had preempted the field in Smith Act cases, thus

depriving the States of authority. *Sweezy v. New Hampshire*, 354 U.S. 234, questioned the authority of an investigation alleged to have been sponsored by the New Hampshire State Legislature. In *Youngstown Sheet and Tube Co., et al. v. Sawyer*, 343 U.S. 579, the Legislative Act of the President in directing seizure of the steel mills was held unconstitutional.[21]

The exercise of legislative power by the Judiciary is subject to the same prohibition and must on like grounds be held a denial of due process. This is the law at the Federal and also at the State level. There is no power in the Judiciary to alter it in any respect.[22] It follows that the attempt to so legislate as to confer inheritance rights on Respondent Stanford was a violation of the Fourteenth Amendment. The retroactive feature of this judicial legislation is, in itself, an infringement of basic rights.

Constitutional Protection for Property Rights.

A study of the opinions rendered from Volume 346, United States Reports, to date, indicates that the following are the only cases during that time dealing with pro

21. Steel Seizure Cases: Majority opinion by Justice Black: "The Constitution limits his (the President's) functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute." 343 U.S. 587. Justice Frankfurter: "The Framers, however, did not make the judiciary the overseer of our government. They were familiar with the revisory functions entrusted to judges in a few of the States and refused to lodge such powers in this Court." 343 U.S. 594. Justice Douglas: " 'The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power.' *Myers v. United States*, 272 U.S. 52, 293." (343 U.S. 629)

22. *Ullmann v. United States*, 350 U.S. 422, 428: "Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process."

tection of property or property rights under the Fifth or Fourteenth Amendments:

Brown v. Board of Education, 347 U.S. 483, 493, involving future earnings possible with improved educational facilities:[23]

Bolling v. Sharpe, 347 U.S. 497—same issue in respect to District of Columbia;

Barsky v. Board of Regents, 347 U.S. 442—right to practice medicine;

Schware v. Board of Bar Examiners, 353 U.S. 232—right to practice law;

Konigsberg v. State Bar, 353 U.S. 252—practice of law;

Shelley v. Kraemer, 334 U.S. 1—right to own and occupy real estate;

Speiser v. Randall, 357 U.S. 513—veterans' right to tax exemption;

First Unitarian Church v. Los Angeles, 357 U.S. 545—tax exemption rights of a church;

Greene v. McElroy, No. 180 Oct. Term 1958, June 29, 1959 (CCH p. 1985)—loss of increased earnings available but for denial of security clearance in defense industry;

Taylor v. McElroy, No. 504 Oct. Term 1958, June 29, 1959 (CCH p. 2089)—earnings lost in defense industry for want of clearance;

Cole v. Young, 351 U.S. 536—employee of Federal Department of Health, Education, and Welfare;

Peters v. Hobby, 349 U.S. 331—earnings of employee in Federal Security Agency;

23. "Today (education) is a principal instrument in awakening the child to cultural values, in *preparing him for later professional training* * * *. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." (347 U.S. 493)

Vitarelli v. Seaton, No. 101 Oct. Term 1958, June 1, 1959 (CCH p. 1319)—earnings of Department of Interior employee;

Slochower v. Board of Education, 350 U.S. 551—earnings of associate professor at Brooklyn College, maintained by City of New York;

Beilan v. Board of Education, 357 U.S. 399—teacher in Philadelphia public schools;

Lerner v. Casey, 357 U.S. 468—subway conductor employed by New York City Transit Authority.

Memorandum opinions and orders to reverse or affirm are not included in this analysis, there being no way to determine the basis for those rulings. The lack of Property Rights decisions in other areas indicates the need for an exercise of certiorari jurisdiction in the pending matter.

Certiorari to Enforce Constitutional Rights.

Rule 19 was not intended to cover or indicate all types of cases within the certiorari jurisdiction under 28 U.S.C.A. Sections 1254 and 1257. There are many cases arising under those jurisdictional provisions where the duty to enforce is clear, and writs have issued in the absence of unusual, important or unsettled questions of law. We cite the following as examples:

Dickinson v. United States, 346 U.S. 389—review of evidence on denial of exemption from military service of person claiming status as a minister of the gospel;

Leyra v. Denno, 347 U.S. 556—whether evidence disclosed that a confession was obtained under duress;

Williams v. Georgia, 349 U.S. 375—whether evidence showed that a negro had been validly deprived of

his right to object to the composition of a jury panel;

Herman v. Claudy, 350 U.S. 116—whether a plea of guilty was obtained under duress;

Fikes v. Alabama, 352 U.S. 191—whether confessions of a negro were obtained under duress;

Delli Paoli v. United States, 362 U.S. 232—effect of the introduction of testimony of certain conspirators on the right of other defendants to a fair trial;

Blackburn v. Alabama, 354 U.S. 393—remand to lower court with instructions to determine whether confession was obtained under duress;

Mallory v. United States, 354 U.S. 449—validity of confession in view of length of time covered by detention;

Rowoldt v. Perfetto, 355 U.S. 115—examination of evidence to determine whether Communist Party membership of a deportee was a "meaningful association" under Sec. 22 of the Internal Security Act of 1950;

Sherman v. United States, 356 U.S. 369—sufficiency of evidence respecting an issue of entrapment, in a narcotics case;

Masciale v. United States, 356 U.S. 386—whether issue of entrapment was properly submitted to the jury;

Payne v. Arkansas, 356 U.S. 560—whether there was a denial of due process in obtaining confession from a negro;

Nowak v. United States, 356 U.S. 660—setting aside denaturalization order against former Communist Party member for want of "clear and convincing evidence";

Miller v. United States, 357 U.S. 301—sufficiency of evidence to sustain search, seizure and arrest in a narcotics case;

Ashdown v. Utah, 357 U.S. 426—reviewing evidence in respect to a confession given by widow, in a murder case after decedent's funeral;

Crooker v. California, 357 U.S. 433—validity of confession given by a college student in a murder case;

Cicenia v. Lagay, 357 U.S. 504—also involving confession and a plea of duress;

Irwin v. Dowd, No. 63 Oct. Term 1958, May 4, 1959 (CCH p. 1125)—review of evidence in a habeas corpus proceeding to determine due process issue in a State prosecution.

Summary Relief on Certiorari.

This Court has the power to issue a writ and grant summary relief thereunder. That procedure has been followed in many cases, including the following:

Kitchens v. United States, Misc. No. 31, Oct. Term 1958;

United States, ex rel. Farnsworth v. Murphy, No. 82, Oct. Term 1958;

Sagamon Valley Television Corp. v. United States, No. 235, Oct. Term 1958;

WIRL Television Corp. v. United States, No. 242, Oct. Term 1958;

New Orleans City Park Improvement Assn. v. Detiege, No. 295, Oct. Term 1958;

WORZ, Inc. v. Federal Communications Comm., No. 349, Oct. Term 1958;

County of Allegheny v. Frank Mashuda Co., No. 347, Oct. Term 1958;

United States v. Halley, No. 300, Oct. Term 1958;

Smith v. United States, Misc. No. 192, Oct. Term 1958;

Townsend v. Sain, Misc. No. 552, Oct. Term 1958;

Handford v. United States, No. 578, Oct. Term 1958;

Grocery Drivers Union Local No. 848 v. Seven-Up Bottling Company of Los Angeles, No. 169, Oct. Term 1958;

Dyer v. SEC, No. 67, Oct. Term 1958;

DeVries v. Baumgartner's Electric Construction Co., No. 551, Oct. Term 1958;

Ohio, ex rel. Klapps v. Dayton Power & Light Co., No. 851, Oct. Term 1958.

The record is clear. It discloses reversible error on Federal grounds; that a decree should be entered instructing the Superior Court of San Francisco County to grant the Amended Petition for Preliminary Distribution and Determination of Heirship (Rec. Item No. 2, page 81) as prayed. Petitioners apply for summary relief, to that effect pursuant to the certiorari power of this Court.

Denial of Due Process on Appeal.

The due process clause applies to the proceedings of the appellate courts. Constitutional protection does not end at the trial court level (*Shelton v. Kramer*, 334 U.S. 1). The following cases are based on this interpretation of the Fourteenth Amendment:

Blackburn v. Alabama, 354 U.S. 393; remand and order requiring the appellate court to exercise jurisdiction in respect to stated issues;

Chessman v. Teets, 354 U.S. 156; false transcript on appeal;

Griffin v. Illinois, 351 U.S. 12; duty to provide an

appeal transcript without cost, to an indigent defendant in a criminal case.

It is true that there is no constitutional right to an appeal. Finality may be given to the judgments of trial courts. However, when the State does provide for appellate review, all litigants are entitled to equal access to that remedy, and to the benefit of due process in the Appellate Court designated by the State. Equal protection requires that the review in all cases be in accordance with constitutional standards.

The Motion for Disqualification.

Respondent seeks to prejudice this Court against Petitioners by a reference to the motion to disqualify, filed by Petitioner Aaron M. Sargent, in respect to Associate Justice Dooling. The action in question was taken in good faith. Subsequent events indicate a reasonable basis for the motion, regardless of the outcome.

This Associate Justice sat as one member of a panel of three, declining to vote either in favor of or against the opinion and judgment of the District Court of Appeal. He declined to participate in the action of that Court on Petition for Rehearing, and by his inaction, Petitioners were deprived of the benefit of a full consideration by *three* Appellate Court Justices. An effective dissent by one member of a completely independent panel could well have prevented the sequence of events we now have. The situation is quite similar to what would exist if a jury, entitled to render a verdict by two-thirds vote, included one or more persons under disqualification.

It is true that Article VI, Section 4a, of the State Constitution, provides that two Justices shall constitute a quorum, and permits entry of a judgment on the concur-

rence of that number. However, when three Justices convene and actually function as a Court, due process requires the active participation of all of them—by either concurring in, or dissenting from, the action taken. Inaction or abdication of duty by any member of the panel is a denial of due process and the equal protection of law contemplated by the Constitution of the United States. Petitioners were deprived of the benefit of this safeguard.

The ground of disqualification relied on here was bias, prejudice and hostility necessarily resulting from a controversy involving the Associate Justice and Petitioner Aaron M. Sargent. This Petitioner is an attorney who has been active for many years in anti-communist work.[24] He was present at a public meeting where the Associate Justice presided. He entered his objection to statements there made by the attorney for the Communist Party of California—a person invited to be guest speaker. The said Petitioner was a member of the organization sponsoring the meeting. The remarks he made were in his legal capacity as a member. He sought to prevent abuse of the facilities of the organization for propaganda purposes. His exercise of the right to freedom of speech was directly concerned with such membership. The organization was the Commonwealth Club of California.

The guest speaker, an accredited representative of Communists, was then under a sentence of imprisonment for criminal contempt committed during the trial of the leaders of the Communist Party of the United States, before Dis-

24. The Notice and Statement Respecting Disqualification, and supporting documents, Rec. Item No. 7, confirms the status of Petitioner Sargent as an active anti-Communist lawyer. See also Sargent testimony before House of Representatives Special Committee to Investigate Tax Exempt Foundations, H. Res. 217 (the Reece Committee), Hearings, Part 1, pp. 189-409 (83d Cong., 2nd Ses.); a publication within the scope of judicial notice.

trict Judge Medina, in the case of *United States v. Dennis, et al.*[25]

The conduct of the Associate Justice was necessarily involved in the action taken at this meeting, and subsequently (See Rec. Items 7, 8, 11, 12). The motion was presented in good faith. In view of this Court's decision in *Offutt v. United States*, 348 U.S. 11, it should have been granted.[26]

The factual situation is quite similar to that now existing in respect to the proposed visit and the hospitality to be extended to Nikita Khrushchev, as official representative of the Soviet Union. The hostilities that arise under these conditions show bias and prejudice as a matter of law.

Equal Protection on Certiorari.

The question arises: What are the rights of non-communists and anti-communists? Do they have the same rights as the petitioners in *Schware v. Board of Bar Examiners*, 343 U.S. 232 and *Konigsberg v. State Bar*, 353 U.S. 252? From the realistic, as well as the legal, standpoint are the rights of persons without revolutionary, radical or other Left-Wing affiliation equally well secured?

---

25. The meeting was one of the Commonwealth Club of California where Richard Gladstein, not a Club member, was invited to appear as guest speaker, taking this opportunity to denounce the Un-American Activities Committee of the State Legislature; using Club facilities for that propaganda purpose. At that time, Gladstein had been held guilty of criminal contempt for misconduct on the trial of the leaders of the Communist Party of the United States, before District Judge Harold Medina in the case of *United States v. Dennis, et al.*, and the contempt citation was sustained by the Court of Appeals in the Second Circuit. See *United States v. Sacher, et al.*, 182 F.2d 416, 430; also, concurring opinion of Circuit Judge Frank, 182 F.2d 453-454, holding the conduct of Gladstein and associates to be the equivalent of "assaulting a pilot of an aeroplane in flight, or turning out the lights during a surgical operation."

26. *Code Civ. Proc.* Section 170; *Giometti v. Etienne*, 219 Cal. 687, 28 P.2d 913; *Evans v. Superior Court*, 107 Cal. App. 372, 382.

It is sometimes inferred that the *practical* operation of the Fourteenth Amendment is limited to racial and group interests. The following dictum in *Shelley v. Kraemer*, 334 U.S. 1, 21—although a clear departure from the actual text of the Amendment, may or may not have been intended to lead to such an interpretation:

> "The Fourteenth Amendment *declares* 'that *all persons, whether colored or white*, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.'"

The Amendment contains no such *declaration;* nor does it refer to persons either "colored" or "white." No term requires *racial* equality. This has been the result of judicial interpretation. The Amendment protects *persons* because they are *persons;* not because they belong to some particular race, class, or group.

The only Amendments referring to "'slavery" or "race" are the Thirteenth, concerning "involuntary servitude"; and the Fifteenth, securing the "right to vote." No racial interest is required in any proceeding under the Fourteenth Amendment.

Due process clause under the Fifth Amendment includes equal protection (*Bolling v. Sharpe*, 347 U.S. 497). The rule in *Shelley v. Kraemer*, 334 U.S. 1, applies to the Federal as well as the State judiciary. The exercise of certiorari jurisdiction should be subject to these constitutional requirements and a writ issued, of course, where due process is denied in a lower appellate court.

Additional Questions Presented for Review.

We cite the following and request that they be added to the Statement at pages 4-7 of the Petition:

Eighth: Due process in civil actions. Is there any distinction between the requirements of due process and equal protection in a criminal proceeding and those standards as applied to a civil action—except in cases where the conduct complained of is not the act of the State?

Is the rule in *Thomson v. Butler*, 136 F.2d 644, 647, subject to the qualification that constitutional rights must be enforced with full equality except where action by the State is lacking?

Ninth: Refusal to enforce laws. Is it a denial of due process and equal protection for the judiciary of a State to decline to enforce the established law in a particular case where it is evident that it has been the practice to recognize and enforce that law in other cases of the same type? Is this a constitutional duty where the law in question is prescribed by the Constitution or Statutes of the State, and, for that reason, beyond the control of a judicial body?

Tenth: Judicial power. Do the opinions in *Youngstown Sheet & Tool Co. v. Sawyer*, 343 U.S. 579, *Greene v. McElroy*, No. 180, Oct. Term 1958, CCH p. 1985, and similar cases, establish the proposition that an exercise of legislative power by the judiciary is unconstitutional to the same extent as resort to such power by any other department other than the legislative branch? Does this rule apply to the judiciary of a State as it does to the Federal judiciary?

Additional Reasons for Issuing the Writs.

The wrongful interpretation of decedent's trust has created a situation where Federal estate taxes estimated at more than $165,000.00 may not be recoverable—unless the Federal authorities are at liberty to disregard State court judgments based on a refusal to enforce the State law.

This situation is important from the tax evasion standpoint.

The view often expressed that the Fourteenth Amendment as now interpreted applies only to racial or other special interest groups should be corrected by a re-examination of the dictum in *Shelley v. Kraemer*, 334 U.S. 1, 21, and by a re-definition of the broad scope and purposes of the Amendment.

It is axiomatic that this Court exercises an important influence on State courts at all levels. The abuses here involved must not be permitted to go unchallenged if the integrity of the judicial process is to be maintained.

Status of Petitioners.

The essential facts concerning the status of Petitioners are summarized in Footnote 25, at page 28, of the Petition.

Decedent's trust is wholly void as contrary to the public policy, Constitution, and Statutes of the State. In consequence, Respondent can derive no rights therefrom.

The situation is one where failure of a particular party to act cannot validate the trust, which is incapable of ratification. The consequence of a failure of decedent's first cousin, Edmund More, Jr., to claim property of the estate has been that his share devolves on others.

He was party to an agreement whereby Petitioner Aaron M. Sargent acquired an undivided one-half interest—which agreement was never cancelled. There was a waiver and relinquishment as to the remaining one-half. Although duly notified of all steps in these proceedings, Edmund More, Jr., has entered no appearance, did not participate in the hearing, failed to appeal, and failed to join in the petition for certiorari. The termination of his rights are now res adjudicata. Full details on this point will be found in the following briefs filed in the State Appellate Courts:

Appellants' Opening Brief, pp. 56-60 (Rec. Item 3);
Appellants' Reply Brief, pp. 101-106 (Rec. Item 5).

CONCLUSION

It is respectfully submitted that full relief should be granted pursuant to 28 U.S.C.A. 1257; that writs should issue, as this Court may determine, either to the trial court, the appellate courts, or both.

Dated: San Francisco, California, September 14, 1959.

AARON M. SARGENTS
Attorney for Petitioners

(Appendix Follows)

Appendix

True Legal Interpretation of the Will.

This analysis of decedent's will is made for the purpose of determining whether there has been compliance with, or violation of, the rule of property established by the Bishop of Durham case and given statutory effect by Section 22.2 of the California Civil Code. The rule as there stated is the following:

> "The question is not, whether he (the trustee) may not apply it (the fund) upon purposes strictly charitable, but *whether he is bound so to apply it?*"[1]

Estate of Hinckley, 58 Cal. 457, at 509, confirmed the rule with the following interpretation:

> "Where a bequest is made for charitable purposes and also for purposes of an indefinite character, which are not charitable, the whole bequest will be void."

And this interpretation was confirmed by the State Supreme Court in *Estate of Sutro*, 155 Cal. 727, at p. 734, with the following statement:

> "The fatal objection to the validity of the trust is that it authorizes the funds to be devoted to purposes other than charitable and that it leaves the question whether it is to be devoted to charitable purposes, or to other uses not charitable, *entirely in the discretion of the executors*, or, in case of their default, *in the discretion of the Board of Trustees*."

We are dealing with a perpetual trust. Its validity therefore depends on whether discretionary non-charitable powers have been conferred, either directly by the words of the will, or necessarily implied therefrom.

The Testamentary Plan.

The will consists of eight parts, logically arranged as to subject matter, and appearing in the following sequence:

---

1. *Morice v. The Bishop of Durham*, 9 Vesey Jr. Reports, p. 399.

1. Burial instructions;
2. The preamble, containing a statement of trust purposes;
3. A bequest to trustees acting for decedent, for these stated purposes;
4. An implementing clause requiring establishment of a foundation and its maintenance in perpetuity;
5. A grant of express powers for administration of the trust fund provided for maintenance;
6. Precatory terms concerning the trust and indicating decedent's motive in establishing it;
7. Provision for annuities;
8. Appointment of an executor and the naming of an alternate.

The key provisions are:

The implementing clause, which requires the foundation to be established as a separate entity;

The broad statement of trust purposes in the preamble, with implied power to carry them out, free of restrictions; and

The provisions in the annuity clause showing the trust to be not necessarily connected with Stanford and capable of being administered by persons in no way connected with the University.

Separate Identity of Foundation and Trust Fund.

The establishment of decedent's foundation and its subsequent maintenance are covered by the following provision of the will at 4:2-5:[2]

2. All citations in this outline refer to the typewritten copies of the will filed with the Clerk for the convenience of the Justices, said copies being in conformity with the will as it appears at pages 3-9 of the Clerk's and Reporter's Transcripts (Rec. Item 2). Page and line references correspond thereto.

"(a) My said Trustees *shall establish* a *Foundation of World Relations*, for the aforesaid purposes; *and* my said Trustees shall use and apply the net income derived from said trust estate for the *maintenance* of said Foundation."

Use of the conjunctive "*and*" shows that two distinct acts —establishment and maintenance, are both required. The word "establish" means "to found; to institute; to create; to set up in business."[3] It indicates that the entity to be set up must be a thing separate from the trust fund. This establishment of the foundation is an act to be performed after decedent's death.

Power to Incorporate the Foundation.

No instruction is given as to the manner in which this entity is to be "established" aside from clear evidence that it is to be a separate thing. In consequence, there is implied power to employ any available means. Civil Code Section 593, in force at the date of the Will, permitted the formation of a nonprofit corporation, with both charitable and non-charitable purposes.[4] Corporations Code, Sec. 9200, in force at date of death, contained similar provisions.

These are the Code sections under which Respondent incorporated Stanford Research Institute, the affiliate engaged in conducting research for industry on a fee contract basis.

---

3. All definitions herein are taken from Webster's International Dictionary—Unabridged.

4. Civ. Code, Sec. 593: "A nonprofit corporation may be formed by any number of persons, not less than three, *for any lawful purposes* such as religious, charitable, social, *educational*, recreational, cemetery, *or for rendering services*, which do not contemplate the distribution of gains, profits or dividends to the members thereof, and for which individuals may lawfully associate themselves * * * The carrying on of *business at a profit* incidental to the main purposes of the corporation and the distribution of assets to members on dissolution shall not be deemed forbidden to nonprofit corporations."

Charter purposes of Foundation. The implementing clause provides:

> "(a) My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes;* * * *" (5:2-3).

The purposes mentioned are those set forth in the preamble (3:25-4:19). It must have *all* of the purposes indicated. These constitute the charter purposes for which the Foundation is to be established. The bequest shows that there is a charter purpose for the correction of every condition mentioned.

> "I have therefore long cherished the hope that I might be able to *do something* to help toward the correction of *these conditions*, and to that end I hereby give and bequeath * * * all of my estate and property, both real and personal and wheresoever the same may be situate, *in trust*, for the *foregoing purposes*. * * *" (4:19-26)

Use of the plural form in the words "conditions" and "purposes" requires the interpretation that this is to be a *multiple purpose* Foundation. It cannot be construed as a Foundation for the *sole* purpose of "providing education for newspapermen" (Op. iv; 17-20).

Conditions Mentioned in the Preamble.

1. The failure of persons in opinion molding vocations to exercise their power.

> "I believe that these handicaps (of environment and language) can be largely overcome, if the men and women whose vocation vests in them the *power to mold public opinion*, make a *conscious effort* to that end." (4:3-6.)

2. The lack of an understanding of conditions by persons in these opinion molding employments.

"However, their effort will go for naught, unless based on sound education on their own part, and thorough understanding of the economics of the various countries of the world, as well as their historic, diplomatic and political backgrounds." (4:6-10.)

3. Mass ignorance of the general public in respect to foreign affairs.

"* * * the attitude of our citizens toward anything foreign, rests almost entirely with the press * * *" (4:12-13.)

4. The power of the press.

"The molding of public opinion in the United States, insofar as concerns the attitude of our citizens toward anything foreign, rests almost entirely with the press * * *" (4:11-13.)

5. Ignorance of editors and foreign correspondents.

"Based on past experience, I believe that it is fair to say that there is a woeful lack of any real education on their part * * *"

Express Provisions Covering Management of Property.

Detailed instructions are given in respect to the management, investment and reinvestment of the Trust Fund, and disbursement of the income therefrom:

"*My said Trustees* shall, in their own discretion, determine from time to time the manner in which said net income may be best expended * * *" (5:6-8.)

"* * * they may, if they deem such course wise, postpone the expenditure of any sums for my said trust purposes, until such time as the net income available therefor shall, in their opinion, be adequate * * *" (5:9-12.)

"*My said Trustees*, during the existence of said trust, shall have full power and authority to invest and reinvest said trust property included therein, and any and every part thereof, in such securities, lands, buildings,

real estate mortgages and the like, as they in their sole discretion may deem to the best interests of said trust: * * *" (5:15-20.)

"* * * the power and authority hereby conferred upon *my said Trustees* shall include both power and authority to sell, assign and convey said trust property and any and every part thereof, or to exchange the same for any other property, whether real or personal." (5:21-25.)

"In this behalf there is certain counsel and advice which I offer to *my said Trustees* for whatever it may be worth, concerning the holding and disposition of my assets, viz:

"(1) In all probability, at the time of my death a large portion of my assets will consist of real estate which is productive of little or no income. However, it is my opinion that this real estate will increase in value in a short period of years, and that the likelihood of such enhancement will justify *my said Trustees* in holding such real estate until such time as the same may be sold without sacrifice, even though such course may postpone the effectiveness of said Foundation of World Relations:" (5:25-6:11.)

"If at the time of my death, preferred and/or common stock of Bancroft-Whitney Company is included among my assets, I believe, since I have great confidence in said corporation and the earning capacity of said stock, that *my said Trustees* would do well to hold the same as part of the corpus of said trust." (6:12-17.)

"The suggestions concerning my assets hereinabove set forth, shall not be construed as restrictions on the absolute power and authority of *my said Trustees* with reference thereto, or to the sale or other disposition thereof; for I realize full well that changes in conditions justify changes in policy." (6:19-24.)

Implied Powers of Execution.

In contrast with these elaborate provisions concerning management of *property*, there are *no provisions* indicating

how the charter purposes of the Foundation are to be carried out. In consequence, the Directors of the Foundation will have unrestricted power to do or perform any act or thing likely to correct, or tend to correct, any of the conditions mentioned.

The draftsman of this document was a lawyer—a person conclusively presumed to know the meaning of legal terms. Under State law, technical terms used in a will so prepared must be taken in their technical sense.[5]

It follows that the established rule in respect to implied powers of trustees is the measure of the discretionary power conferred. This rule is expressed in the following authorities:

1. Vol. 1, *Restatement of the Law of Trusts*, Sec. 186, p. 485:

> "* * * the trustee can properly exercise such powers and only such powers as (a) are conferred upon him in specific words by the terms of the trust, or (b) *are necessary or appropriate* to carry out the *purposes* of the *trust* and are *not forbidden by the terms of the trust*."

2. Bogert on "*Trusts and Trustees*", Vol. 2A, Sec. 391, p. 190:

> "Trustees of charitable trusts have such powers as are expressly or impliedly given them by the settlor, or are vested in them by statute."

3. Bogert on "*Trusts and Trustees*", Vol. 3, Part 1, Sec. 551, p. 406:

> "Implied powers are those which are not clearly and directly given by the settlor or a court, but which equity believes the founder of the trust or a court

5. *Probate Code*, Sec. 106; *Estate of Bourn*, 25 Cal. App. 2d 590, 595, 73 P.2d 193, 196; *Estate of Northcutt*, 16 Cal. 2d 683, 688, 107 P.2d 607, 610.

granting express powers intended should exist. They are implied or inferred from the terms and purposes of the trust. If a settlor has directed the trustee to reach a certain end, he must be deemed to have intended that the trustee use the ordinary and natural means for obtaining that result. The court reads such a desire into the trust instrument, not because the court is adding something to the trustee's authority for the sake of bringing about a result which it thinks would be just, but for the reason that chancery believes that the settlor actually wished the trustee to have such power, although he did not in so many words grant the authority."

4, Scott on "*Trusts*", Vol. II (Second Edition), Sec. 186, p. 1370:

"*Extent of the trustee's powers.* A trustee has such powers as are specifically conferred by the terms of the trust and such powers as are necessary or appropriate for the carrying out of the purposes of the trust and not forbidden by the terms of the trust. The expression 'terms of the trust' is here used in the broad sense in which it is used in the Restatement of Trusts and throughout this treatise; it is not intended to express provisions of the trust instrument, but includes whatever may be gathered as to the intention of the settlor from the trust instrument as interpreted in the light of all the circumstances, and any other indication of the intention of the settlor which is admissible in evidence."

This rule as to implied power was part of the law at date of execution of the will and also at date of death; it is therefore one of the terms of the trust, which must be construed in accordance therewith.

Absence of Restrictions on Implied Power.

The sentence at 4:19, et seq., containing the bequest in trust, includes the following broad grant of general authority:

"I have therefore long cherished the hope that I might be able *to do something* to help toward *the correction* of these conditions; and to that end I hereby give and bequeath * * *"

The word "charitable" does not appear in the will.

No clause limits the Trustees to the use of those *activities* and *means* which the law deems charitable.

They are not required to avoid operations conducted for profit.

There is no clause requiring use of educational means, either in whole or in part.

The legal consequence of these omissions is that all activities and means—both charitable and non-charitable; educational and non-educational—are not only authorized, but expressly permitted.

Non-Charitable and Non-Educational Possibilities.

The conditions here mentioned are capable of being corrected in a variety of ways, including the following:

The failure of the opinion molders to exercise their power may be corrected by the Foundation engaging in the business of television or radio broadcasting, with commercial sponsorship, or for the benefit of commercial interests;

The same objective may be realized by acquiring control over a broadcasting outlet and operating it on a business basis.

The lack of understanding of international conditions may be corrected by the commercial production, sale and distribution of educational materials.

A similar result may be achieved by the publication and distribution of a news bulletin to a list of paid subscribers.

The knowledge of editors and foreign correspondents may be increased by the commercial publication, sale and

distribution of educational material specially adapted to their needs.

There is no stated purpose set forth in the preamble requiring that *anything* necessarily be done on the campus of a University, or that Stanford University, as such, be connected therewith.

Absence of a Request to Respondent.

The technical meaning of the term designating the trustees is that the persons appointed function as *trustees of the decedent* and not in any capacity as trustees for the use or benefit of Stanford University or any University Department. Throughout the will, decedent refers to the trustees as "*my* said Trustees"—there being a total of *twelve* such provisions. In the clause at 8:10-17, she refers to the possibility that neither the Trustees nor the University may accept, indicating that a substitute or successor trustee may be required. There is no provision containing any bequest to Respondent, as the governing body of the University. Even if the bequest were in that form, Respondent has the power to engage in non-charitable activity, and has done so on many occasions.